IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 30706 of 2007(S)

OA.287/2005 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:

C.V.ANTONY, INCOME TAX INSPECTOR,
OFFICE OF THE JOINT DIRECTOR OF INCOME TAX(INV)
SOUTH RAILWAY STATION ROAD, ERNAKULAM,
COCHIN - 682 016.

BY ADV. SRI.P.KESAVAN NAIR

RESPONDENTS:
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1. THE CHAIRMAN,
CENTRAL BOARD OF DIRECT TAXES,
NORTH BLOCK, NEW DELHI - 110 001

2. THE CHIEF COMMISSIONER OF INCOME TAX,
CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD,
ERNAKULAM - 682 018.

3. THE COMMISSIONER OF INCOME TAX,
CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD,
ERNAKULAM 682 018.

4. THE DIRECTOR OF INCOME TAX (INCOME TAX)
5TH FLOOR, MAYUR BHAVAN, CONNAUGHT CIRCUS,
NEW DELHI - 110 001.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.30706 of 2007-S

Judgment

Balakrishnan Nair, J.

The petitioner was the applicant in OA No.287/05. The respondents herein were the respondents in the OA.

2. The brief facts of the case are the following. The petitioner is an Income Tax Inspector. For promotion to the post of Income Tax Officer, he should clear the departmental test consisting of five subjects. The first subject is Income Tax Law with two parts with 100 marks each. For clearing the examination, the candidates should get 50% marks for each subject and 60% of the total aggregate marks when all the subjects are taken together. The relevant Rule is Rule VI of the Rules, which is quoted below for convenient reference :

> ***"Rule VI - Pass Percentage** :*
>
> *1. A candidate will be declared to have completely passed the Departmental Examination for ITOs if he secures a minimum of 50% in each of the following subjects ;*
>
> *(i) Income Tax Law (2 papers) combined aggregate of 50% in*

both papers.

(ii) Other Taxes

(iii) Book Keeping

(iv) Office Procedure

(v) Examination of Accounts & Language Test paper and secures 60% marks in the aggregate. For the purpose of aggregation, the marks in the subject Examination of Accounts and the Language Test Paper will be restricted to 100.

2. A candidate who has secured 60% or more marks in a particular subject or subjects in one examination will be exempted from appearing in that subject or those subjects in the subsequent examinations. For the purpose of reckoning 60% marks in a particular subject, IT Law-I and IT Law-II will be treated as one subject.

3. Where a candidate has secured exemption in one or more subjects, the marks in excess of 60% in each subject will be taken into account in reckoning the overall aggregate of 60% in every subsequent examination. However, the marks in Examination of

Accounts & Language Test will be restricted to 10 only.

4. Where a candidate has not secured exemption in a subject, the marks obtained in that subject in the latest chances availed by him will be taken into account for the purpose of determining the aggregate of 60% as the case may be."

The petitioner has cleared all the subjects except the subject Income Tax Law. He attempted the two papers of the said subject in the year 2003. He could get only 44 and 37 marks for Papers I & II respectively. In 2002 also, he attempted those two papers of the said subject and got 57 and 56 marks respectively out of 100. He submits, if his marks for the said subject for the year 2002 are reckoned, it can be taken that he has cleared the examination. But the respondents are reckoning only the marks of 2003 examination. Feeling aggrieved by the said interpretation of the Rules by the respondents, the petitioner moved the CAT by filing the aforementioned OA. The said OA was dismissed by Ext.P11 order dated 04.06.2007. Hence this Writ Petition, challenging Ext.P11.

3. The learned counsel for the petitioner submitted that Sub-rule (4) of Rule VI would indicate that the marks secured by him in 2002 can also be

reckoned. According to him, the word “chances” used in the sub-rule (4) would support the above interpretation given by him to the Rule. The very same contention was raised before the CAT and the same was rejected. We find it difficult to agree with the learned counsel for the petitioner. We feel that the interpretation attributed to the Rule by the respondents is a plausible view. Further, the Rule has been understood and applied in a particular manner over the years. Normally the courts will be slow to interfere with such interpretations. See the decision of the Apex Court in **Keshav Mills Co. Ltd v. Commissioner of Income Tax** (AIR 1965 SC 1636). In the said decision, the Apex Court has held that the view taken on a legal point which held the field for a long time should not be disturbed, even if a different view is possible. In the result, the Writ Petition fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

17.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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